

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TERRENCE VERNELL WILLIAMS,

Petitioner,

v.

CASE NO. 07-12348
HONORABLE ARTHUR J. TARNOW

RAYMOND BOOKER,

Respondent.

_____ /

ORDER GRANTING RESPONDENT'S MOTION FOR A STAY,

Respondent Raymond Booker has appealed the Court's opinion and judgment granting Petitioner's application for the writ of habeas corpus. Currently pending before the Court are (1) Respondent's motion for immediate consideration and an order staying operation of the Court's opinion and judgment and (2) Petitioner's motion for release on bond. The motion for a stay is **GRANTED**. The motion for release on bond is held in abeyance.

Petitioner has been convicted of conspiracy to commit murder, Mich. Comp. Laws §§ 750.157a and 750.316(1)(a), felon in possession of a firearm, Mich. Comp. Laws §750.224f, and two counts of possessing a firearm during the commission of a felony, Mich. Comp. Laws § 750.227b. He has served his two-year sentence for the felony firearm convictions, but remains incarcerated on his sentence of life imprisonment for the conspiracy conviction and 42 to 90 months (three and a half to seven and a half years) in prison for being a felon in possession of a firearm. Petitioner alleged in his habeas petition that his trial attorney was ineffective for failing to convey a plea offer to him and that the evidence at trial

was insufficient to support his conspiracy conviction. The Court held an evidentiary hearing and concluded in an opinion and order dated May 28, 2010, that Petitioner's sufficiency-of-the-evidence claim lacked merit, but that Petitioner was entitled to relief on his ineffective-assistance-of-counsel claim. The Court ordered the State to release Petitioner unless, within sixty days, the State offered Petitioner an opportunity to plead guilty. Respondent seeks a stay of the Court's dispositive opinion and judgment pending his appeal. Petitioner opposes a stay and seeks release on bond or on his own recognizance while the appeal is pending.

II. Discussion

Federal Rule of Appellate Procedure 23(c) provides that, while a decision ordering the release of a prisoner is on appeal, "the prisoner must -- unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise -- be released on personal recognizance, with or without surety." The United States Supreme Court has held that a federal court should consider the following factors in deciding whether to stay an order granting habeas corpus relief pending appeal:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Hilton v. Braunskill, 481 U.S. 770, 776 (1987).

A federal court may also consider "[t]he State's interest in continuing custody and rehabilitation pending a final determination of the case on appeal . . . ; it will be strongest where the remaining portion of the sentence to be served is long, and weakest where there is little of the

sentence remaining to be served.” *Id.* at 777. Petitioner is thirty-four years old and is serving a life sentence. Therefore, the remaining portion of his sentence to be served is long.

With respect to the remaining *Hilton* factors, the Court notes that Petitioner may be injured by his continued confinement pursuant to a conviction this Court has found to be constitutionally infirm. On the other hand, it would be a waste of judicial resources for the appeal to proceed in the Sixth Circuit Court of Appeals, while simultaneously requiring the State to grant relief to Petitioner. Considering the factors enumerated in *Hilton*, the Court holds that a stay pending appeal is appropriate in this case.

Accordingly, **IT IS ORDERED** that Respondent’s motion for immediate consideration and a stay pending appeal [Dkt. 36] is **GRANTED**. This Court’s opinion and order granting Petitioner’s application for habeas corpus relief is **STAYED** pending disposition of the appeal in the United States Court of Appeals for the Sixth Circuit.

IT IS FURTHER ORDERED that Petitioner’s request for bond is taken under advisement.

S/Arthur J. Tarnow
Arthur J. Tarnow
United States District Judge

Dated: July 8, 2010

I hereby certify that a copy of the foregoing document was served upon counsel of record on July 8, 2010, by electronic and/or ordinary mail.

S/Catherine A. Pickles
Judicial Secretary